

§ 5.713

(f) Copies of the temporary credential issued become a part of the record on appeal.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2004-18884, 69 FR 58342, Sept. 30, 2004; USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§ 5.713 Appeals to the National Transportation Safety Board.

(a) The rules of procedure for appeals to the National Transportation Safety Board from decisions of the Commandant, U.S. Coast Guard, affirming orders of suspension or revocation of credentials or endorsements are in 49 CFR part 825. These rules give the party adversely affected by the Commandant's decision 10 days after service upon him or his attorney of the Commandant's decision to file a notice of appeal with the Board.

(b) In all cases under this part which are appealed to the National Transportation Safety Board under 49 CFR part 825, the Chief Counsel of the Coast Guard is designated as the representative of the Commandant for service of notices and appearances. Communications should be addressed to Commandant (CG-094), Attn: Judge Advocate General (JAG) and Chief Counsel, U.S. Coast Guard Stop 7213, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7213.

(c) In cases before the National Transportation Safety Board the Chief Counsel of the Coast Guard may be represented by others designated of counsel.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009; USCG-2009-0702, 74 FR 49224, Sept. 25, 2009; USCG-2013-0671, 78 FR 60144, Sept. 30, 2013]

§ 5.715 Stay of effect of Decision of the Commandant on Appeal: Temporary credential and/or endorsement pending appeal to National Transportation Safety Board.

(a) A Decision of the Commandant on Appeal affirming an order of revocation, except a revocation resulting from an offense enumerated under § 5.59 or suspension that is not placed entirely on probation, which is appealed to the National Transportation Safety Board, may be stayed if, in the Com-

46 CFR Ch. I (10-1-14 Edition)

mandant's opinion, the service of the appellant on board a vessel at that time or for the indefinite future would be compatible with the requirements of safety at sea and consistent with applicable laws. If one of the offenses enumerated in § 5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant; in cases of offenses under § 5.61(a), a temporary credential and/or endorsement may be denied for that reason alone.

(b) A stay of the effect of the Decision of the Commandant on Appeal may be granted by the Commandant upon application by the respondent filed with the notice served on the Commandant under 49 CFR 825.5(b).

(c) An Officer in Charge, Marine Inspection, on presentation of an original stay order, issues a temporary credential and/or endorsement as specified in the stay order. This credential and/or endorsement is effective for not more than six months, renewable until such time as the National Transportation Safety Board has completed its review.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

Subpart K—Review of Administrative Law Judge's Decisions in Cases Where Charges Have Been Found Proved

§ 5.801 Commandant's review.

Any decision of an Administrative Law Judge, in which there has been a finding of *proved*, may be called up for review by the Commandant without procedural formality.

§ 5.803 Record for decision on review.

The transcript of the hearing, together with all papers and exhibits filed, shall constitute the record for consideration and review.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2004-18884, 69 FR 58342, Sept. 30, 2004]

§ 5.805 Action on review.

(a) The Commandant may adopt, in whole or in part, the findings, conclusions, and basis therefor stated by the

Coast Guard, DHS

§ 5.903

Administrative Law Judge, may make entirely new findings on the record, or may remand the case to the Administrative Law Judge for further proceedings.

(b) In no case will the review by the Commandant be followed by any order increasing the severity of the Administrative Law Judge's original order.

(c) The Decision of the Commandant on Review, shall be the final agency action in the absence of a remand.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2004-18884, 69 FR 58342, Sept. 30, 2004]

§ 5.807 Commandant's Decision on Review.

The Commandant's Decisions on Review are available for reading purposes at Coast Guard Headquarters, at Offices of District Commanders, Sector Offices and Marine Inspection Offices. (See 33 CFR subpart 1.10.)

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-2006-25556, 72 FR 36330, July 2, 2007]

Subpart L—Issuance of New Credential or Endorsement After Revocation or Surrender

§ 5.901 Time limitations.

(a) Any person whose credential or endorsement has been revoked or surrendered for one or more of the offenses described in § 5.59 and § 5.61(a) may, three years after compliance with the Administrative Law Judge's decision and order or the date of voluntary surrender, apply for the issuance of a new credential or endorsement.

(b) The three year time period may be waived by the Commandant upon a showing by the individual that, since the occurrence upon which the revocation or surrender was based, the individual has demonstrated his good character in the community for a period exceeding three years.

(c) Any person whose credential or endorsement has been revoked or surrendered for one or more offenses which are not specifically described in §§ 5.59 or 5.61(a) may, after one year, apply for the issuance of a new credential or endorsement.

(d) For a person whose credential or endorsement has been revoked or surrendered for the wrongful simple possession or use of dangerous drugs, the three year time period may be waived by the Commandant upon a showing that the individual:

(1) Has successfully completed a bona fide drug abuse rehabilitation program;

(2) Has demonstrated complete non-association with dangerous drugs for a minimum of one year following completion of the rehabilitation program and;

(3) Is actively participating in a bona fide drug abuse monitoring program.

(e) For a person whose credential or endorsement has been revoked or surrendered for offenses related to alcohol abuse, the waiting period may be waived by the Commandant upon a showing that the individual has successfully completed a bona fide alcohol abuse rehabilitation program and is actively participating in a bona fide alcohol abuse monitoring program.

(f) The waivers specified under subparagraphs (d) or (e) of this section may only be granted once to each person.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 84-099, 52 FR 47535, Dec. 14, 1987; USCG-2006-24371, 74 FR 11215, Mar. 16, 2009]

§ 5.903 Application procedures.

(a) An application form for a new credential or endorsement may be obtained from any Officer in Charge, Marine Inspection.

(b) The completed application and letter must be addressed to the Commandant (CG-094), Attn: Judge Advocate General (JAG) and Chief Counsel, U.S. Coast Guard Stop 7213, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7213, and must be delivered in person to the nearest Officer in Charge, Marine Inspection.

(c) The letter is an informal request for the issuance of a new credential or endorsement and should include the following:

(1) A letter from each employer during the last three years attesting to the individual's work record;

(2) Information supportive of rehabilitation or cure when the credential or endorsement was revoked because of